

## TOWN OF ACTON

# Inter-Departmental Communication

DATE: MAY 31, 1977

FROM: RALPH HERRICK, TOWN ENGINEER  
TO: C.J. FARRELL, TOWN MANAGER  
SUBJECT: ARLINGTON ST., CULVERT FAILURE

The Highway Department has again been confronted with the failure of a metal arch culvert such as occurred in March, 1976. This culvert break is also located on Arlington Street at station 69 + 10<sub>+</sub> close to the intersection of Hayward Road. Both culverts that failed were placed approximately forty years ago and their useful life has expired. We have included the replacement of this culvert, plus others, in the budget for 1977-78 so there is no problem on funding.

This does, however, create an emergency situation requiring replacement. We have temporarily spanned the break in the pipe with metal plates and patched the hole in the road pavement. (picture enclosed) If the emergency status is agreeable to the Board of Selectmen and the Conservation Commission, expeditious replacement will be scheduled. An undue delay will result if we follow the normal route of filing a notice of intent and request for a determination on the Wetlands Protection Act, with related waiting periods for advertising, hearing, and final decision.

We are anticipating the immediate replacement and are performing field survey, drainage calculations, and ~~plans to expedite the project with the least disturbance~~ possible. It may be necessary to place a bypass culvert to divert the brook while the bed for the permanent culvert is prepared.

May 31, 1977

We therefore request that the Board of Selectmen petition the Conservation Commission to waive the usual procedure of filing the notice of intent and give approval under emergency conditions to proceed with this work.

*Ralph W. Herrick*

Ralph W. Herrick  
Town Engineer

RWH: ds

cc: Highway Dept.



weeds (*Polygonum*), sweet gale (*Myrica*), water lilies (*Nymphaeaceae*), or willow (*Decodon verticillatus*).

Selectmen or mayor receiving notice of hearing on the proposed activity of said notice. Notice of the time given by the hearing authority at the five days prior to such hearing, by circulation in the city or town where a notice to the applicant and to the board of said city or town and to the department of public works. The selectmen, officers and employees and the applicant and his agents and employees, may for the purpose of performing their duties

on commission, selectmen or mayor, the area on which the proposed work is for private water supply, to the ground for storm damage prevention, to prevention of draining shellfish, or to the protection of the conservation commission, board of selectmen or mayor. Within ten days of such hearing impose such conditions for the protection of the interests described in accordance therewith. If the conservation commission, as the case may be, make a determination that such work does not require the imposition of such conditions, it shall be notified of such determination within ten days. Such order or notification shall be filed with the conservation commission or the department of public works, and a copy thereof shall be sent to the department of natural resources and

failed to hold a hearing within the time specified, if a commission, after holding such hearing, fails to issue an order, or request by any person to determine whether any work, fails within ten days to issue an order from said commission, or if the order issued by said commission's order or notification abutting the land upon which the work is being performed by the residents of the city or town in which the land is situated, notified in writing and within ten days from the date of such act, request the department of public works for the area on which the proposed work is for private or public water supply, to the ground for storm damage prevention, to the ground for land containing shellfish or to the

protection of fisheries. The commissioner of natural resources also may request such a determination within said ten days. The party making any such request shall at the same time send a copy thereof by certified mail to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. If such party is other than the applicant, a copy of such request shall also be sent at the same time by certified mail to the applicant. Upon receipt of such request the department of natural resources shall make the determination requested and shall by written order issue within seventy days of receipt of such request, signed by the commissioner of natural resources, impose such conditions as will contribute to the protection of the interests described herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination. Such order shall supersede the prior order of the conservation commission, board of selectmen or mayor, and all work shall be done in accordance therewith, but in no event shall any work commence until ten days have elapsed following the issuance of said order. At any time prior to a final order of determination by the department, any party requesting a determination may in writing withdraw the request, and such withdrawal shall be effective upon receipt by the department. Notwithstanding the withdrawal, the commissioner may continue the determination if he notifies all parties within ten days of receipt of the withdrawal. A copy of such order shall be sent to the applicant, to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder, and to the department of public works.

No work proposed in any notice of intention shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the registry of deeds for the district in which the land is located.

Any site where work is being done which is subject to this section shall display a sign of not less than two square feet or more than three square feet bearing the words, "Massachusetts Department of Natural Resources File Number . . ." and the sign shall display the file number assigned to the project.

If the department of public works finds that any proposed work would violate the provisions of chapter ninety-one, it shall proceed immediately to enforce the provisions of said chapter.

The provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of lands for agricultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.

The notice of intention required in the first paragraph of this section shall not apply to emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which

are ordered to be performed by an agency of the commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the commissioner and the conservation commission of the city or town in which the project would be undertaken, or if none, by the mayor of said city or the selectmen of said town. In no case shall any removal, filling, dredging, or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section or in violation of any order issued under this section shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation. Any court having equity jurisdiction may restrain a violation of this section and enter such orders as it deems necessary to remedy such violation, upon the petition of the attorney general, the commissioner of natural resources, a city or town, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the commonwealth under the provisions of section ten A of chapter two hundred and fourteen.

Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section.

Whoever violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both. Each day or portion thereof of continuing violation shall constitute a separate offense. This section may be enforced by natural resources officers, deputy natural resources officers, and any officer having police powers. (Amended by 1972, 784, § 1, approved July 18, 1972, effective 90 days thereafter; 1973, 163, approved Apr 9, 1973, effective 90 days thereafter; 1973, 769, approved, with emergency preamble, Sept. 17, 1973; 1974, 818, § 1, approved, with emergency preamble, Aug. 13, 1974.)

#### Editorial Note—

The 1972 amendment extensively rewrote the section, among other things making its provisions applicable to the protection of land bordering the ocean and lands subject to tidal action and coastal flowage, changing the procedure for obtaining approval of proposed work affecting flood plain areas, and adding provisions for objecting to a determination and for appeal. Sections 3 and 4 of the amending act provide as follows:

SECTION 3. All orders issued under the authority of section twenty-seven A of chapter one hundred and thirty of the General Laws prior to the effective date of this act shall remain in full force and effect until amended or repealed by the commissioner of natural resources.

SECTION 4. The department of natural resources is hereby authorized and directed to map the commonwealth so as to make available to municipalities the delineation of wetlands within their boundaries.

The first 1973 amendment inserted a sentence at the end of the fourth paragraph providing for examination or survey by the conservation commission of wetlands where notice has been given of prospective alterations.

The second 1973 amendment added a paragraph following the eleventh paragraph.

The 1974 amendment rewrote the section, making numerous changes and additions, including definitions for "bogs", "coastal wetlands", "freshwater wetlands", "swamps", "wet meadows" and "marshes" and providing exceptions for maintenance of public utilities facilities, cranberry bogs and projects authorized by special acts prior to January 1, 1973.

Section 3 of the amending act provides: SECTION 3. Within ninety days of the passage of this act, the department of natural resources shall promulgate the regulations under and thirty-one of the General Laws, shall concern, but shall not be limited to, establishing standard application forms required for issuance of an order pur-

Private individuals had no standing to raise constitutional issues under C. 131, § 40, since the statute protects the public interest. *Christoffels v. Alton Towers, Inc.* 1972 Adv. sheets 1334, 28453.

GL c. 131, § 40 does not preclude

#### § 40A. Protection of Inland Wetlands

The commissioner of natural resources shall from time to time, and from time to time, and promoting the public safety, regulate, restrict or prohibit any activity which may alter or pollute inland wetlands" shall include the definition of "inland wetlands" in section forty, and it shall include any inland wetland which touches any inland wetland subject to the provisions of this section.

The commissioner shall promulgate rules and regulations, in the order that, along any waterway, the direction of the waterway, encroachment shall be placed on private, unless authorized by the commissioner, establishing such encroachment boundaries of the area which are as inland wetlands in accordance with the provisions of this section.

The commissioner shall, by the preceding paragraphs, hold a watershed region in which the affected are located, giving notice to the department of public works, the metropolitan district commissioners and assessors of each such wetland or flood plain prior thereto. For the purpose of this section, the notice was assessed in the last preceding paragraph. The assessed owner thereof, in the manner as the notice of such different address is known by the preceding paragraphs, in which case the notice shall be